

SECRET

Approved For Release 2002/05/06 : CIA-RDP87-00384R000700060010-0

SECURITY INFORMATION

Contracts - Comm.

25X1A

18 September 1953

SE Division
Assistant General Counsel

Telephone Conversation Between []

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OGC Has Reviewed

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1. I am in receipt of your memorandum entitled "Memorandum of Telephone Conversation between [] of General Counsel's Office and [] of SE Division on 31 August 1953." Inasmuch as the referenced memorandum is not entirely accurate, I feel obliged to return it to your office with appropriate comments. With respect to the agent concerned executing a waiver on any rights he might have against the Government, I stated that I could not perceive the advisability or desirability of such action. My basic reason was that the agent concerned is an independent contractor and has no rights other than those specified in his contract. Hence, obtaining a waiver from the agent might in some way be construed to constitute an acknowledgment by the Government that the agent concerned possessed "some kind of right."

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2. The procedure that the individual concerned would pursue, were he so minded, in establishing an employee status would be to seek a legal determination as to whether an employer-employee relationship existed within the contemplation of Section 40(b) of the Federal Employees Compensation Act, as amended. If a favorable judicial determination were made, there would not be involved the problem of suing since the benefits would follow automatically as a result of his employee status. I stated further that in my opinion the payments to the agent concerned were in the nature of gratuities since they were not founded in the contract instrument. I added that the only basis under which payments of this type might be justified would be on the theory of a gift or bonus. Your memorandum would appear to indicate an acknowledgment on my part that the benefits received "were granted as a gift or bonus."

3. Since matters of this type may well serve as a basis for administrative action and since the categories of an independent contractor and its possible development into the "employee" category is not without unusual legal considerations, I feel that a more proper method of treating these matters is through formal submission to this Office. In this way the matter may receive the attention which it deserves. Administrative action should not hinge upon the elusiveness of the fleeting word.

4. In conclusion I also stated that the authority under which the payments were made in behalf of the agent was not clear and that some attendance should be given to this matter inasmuch as it inherently becomes a matter of concern to the auditor.

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cc: - []

OGC chrono

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